

LEGISLATURE OF NEBRASKA
NINETY-NINTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 336

Introduced by Natural Resources Committee:
Schrock, 38, Chairperson; Hudkins, 21; Kopplin, 3;
Kremer, 34; Louden, 49; McDonald, 41; Smith, 48;
Stuhr, 24; and Engel, 17

Read first time January 11, 2005

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to electricity; to adopt the Public Entities
2 Mandated Project Charges Act; and to provide
3 severability.
4 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 17 of this act shall be known
2 and may be cited as the Public Entities Mandated Project Charges
3 Act.

4 Sec. 2. For purposes of the Public Entities Mandated
5 Project Charges Act, the definitions found in sections 3 to 11 of
6 this act apply.

7 Sec. 3. Financing costs means:

8 (1) Interest, including, but not limited to, capitalized
9 interest, and redemption premiums that are payable on mandated
10 project bonds;

11 (2) The cost of retiring or refunding a public entity's
12 existing debt in connection with the issuance of mandated project
13 bonds, but only to the extent the debt was issued for the purposes
14 of financing mandated project costs;

15 (3) Any cost related to the issuing and servicing of
16 mandated project bonds, including, but not limited to, servicing
17 fees, trustee fees, legal fees, administrative fees, bond counsel
18 fees, bond placement or underwriting fees, remarketing fees, broker
19 dealer fees, payments under an interest rate swap agreement,
20 financial advisor fees, accounting or engineering report fees, and
21 rating agency fees;

22 (4) Any expense associated with any bond insurance
23 policy, credit enhancement, or other financial arrangement entered
24 into in connection with the issuance of mandated project bonds; and

25 (5) The funding of one or more reserve accounts related
26 to mandated project bonds.

27 Sec. 4. Mandate means a requirement imposed by a statute
28 of the United States or the State of Nebraska, a rule, a

1 regulation, an administrative or a judicial order, a licensing
2 requirement or condition, any agreement with or requirement of a
3 regional transmission organization, or any consent order or
4 agreement between the United States or the State of Nebraska, or
5 any agency thereof, and a public entity.

6 Sec. 5. Mandated project means the construction,
7 retrofitting, rebuilding, acquisition, or installation of any
8 equipment, device, structure, improvement, process, facility,
9 technology, or other property owned, licensed, or controlled by a
10 public entity or operated for the benefit of a public entity
11 through a power participation or purchase agreement, either within
12 or outside the State of Nebraska, and used in connection with a new
13 or existing facility related to electrical power generation,
14 transmission, or distribution, which construction, retrofitting,
15 rebuilding, acquisition, or installation is undertaken to satisfy a
16 mandate, including, but not limited to, any equipment, device,
17 structure, improvement, process, facility, technology, or other
18 property related to environmental pollution control, safety, or
19 useful life extension of an existing plant or facility.

20 Sec. 6. Mandated project bonds means bonds, notes, or
21 other evidences of indebtedness that are issued by a public entity,
22 the proceeds of which are used directly or indirectly to pay or
23 reimburse mandated project costs and financing costs and which
24 bonds are secured by and payable from mandated project charges.

25 Sec. 7. Mandated project charge means a charge paid by
26 customers of a public entity to pay or reimburse the public entity
27 for mandated project costs, including any adjustment of the charge
28 pursuant to subdivision (4) of section 12 of this act, or financing

1 costs.

2 Sec. 8. Mandated project costs means capital costs
3 incurred or to be incurred by a public entity with respect to a
4 mandated project, including the payment of debt service on mandated
5 project bonds, either directly or through a power participation or
6 purchase agreement, and any related operating expenses.

7 Sec. 9. Public entity means a municipality, a registered
8 group of municipalities, a public power district, a public power
9 and irrigation district, an electric cooperative, an electric
10 membership association, a joint entity formed under the Interlocal
11 Cooperation Act, a joint public agency formed under the Joint
12 Public Agency Act, an agency formed under the Municipal Cooperative
13 Financing Act, or any other governmental entity.

14 Sec. 10. Related operating expenses means any necessary
15 operating expenses of a project or system required to be paid from
16 the mandated project charge by an order of a court pursuant to 11
17 U.S.C. 928(b), as such section existed on January 1, 2005, and any
18 successor provision thereof.

19 Sec. 11. Special revenues has the definition found in 11
20 U.S.C. 902(2) as such section existed on January 1, 2005, and any
21 successor provision thereof.

22 Sec. 12. A public entity may elect to pay or reimburse
23 mandated project costs and financing costs through the use of
24 mandated project charges. Public entities are hereby authorized to
25 impose and collect mandated project charges as provided in the
26 Public Entities Mandated Project Charges Act. The election to use
27 mandated project charges shall be made and evidenced by the
28 adoption of a resolution of the governing body of the public entity

1 authorizing the mandated project as set forth in the public
2 entity's capital budget. The authorizing resolution shall include
3 the following:

4 (1) A statement that the project is a mandated project
5 and a description of the mandate that will be addressed by the
6 mandated project;

7 (2) A statement that the public entity is electing to pay
8 or reimburse the mandated project costs and financing costs with
9 mandated project charges in accordance with the Public Entities
10 Mandated Project Charges Act;

11 (3) An authorization to add a separate charge to each
12 customer's electric service bill, representing such customer's
13 portion of the mandated project charge;

14 (4) A description of the financial calculation, formula,
15 or other method that the public entity utilizes to determine the
16 mandated project charges that customers will be required to pay for
17 the mandated project, including a periodic adjustment method,
18 applied at least annually, that shall be utilized by the public
19 entity to correct for any overcollection or undercollection of such
20 mandated project charges or any other adjustment necessary to
21 assure payment of debt service on mandated project bonds,
22 including, but not limited to, the adjustment of the mandated
23 project charges to pay related operating expenses and any debt
24 service coverage requirement. The financial calculation, formula,
25 or other method, including the periodic adjustment method,
26 established in the authorizing resolution pursuant to this
27 subdivision, and the allocation of mandated project charges to and
28 among its customers, shall be decided solely by the governing body

1 of the public entity and shall be final and conclusive. In no
2 event shall the periodic adjustment method established in the
3 authorizing resolution pursuant to this subdivision be applied less
4 frequently than required by the governing documents of any mandated
5 project bonds issued to finance the mandated project. Once the
6 financial calculation, formula, or other method for determining the
7 mandated project charges, and the periodic adjustment method, have
8 been established in the authorizing resolution, they shall not be
9 changed; and

10 (5) If mandated project bonds are to be issued for the
11 mandated project, a requirement that the public entity shall enter
12 into a servicing agreement for the bonds with a trustee selected by
13 the governing body and the public entity shall act as a servicing
14 agent for purposes of collecting the mandated project charges.
15 Money collected by the public entity, acting as a servicing agent
16 on behalf of a trustee, shall be held for the exclusive benefit of
17 holders of mandated project bonds.

18 The determination of the governing body that a project is
19 a mandated project shall be final and conclusive, and any mandated
20 project bonds issued and mandated project charges imposed relating
21 to such determination shall be valid and enforceable in accordance
22 with their terms. The public entity shall require, in its
23 authorizing resolution with respect to mandated project charges,
24 that so long as any customer obtains electric distribution service
25 from the public entity, the customer shall pay the mandated project
26 charge to the public entity regardless of whether or not the
27 customer obtains electric energy service from the public entity or
28 another energy supplier other than the public entity. All

1 provisions of the authorizing resolution adopted pursuant to this
2 section shall be binding on the public entity and on any successor
3 or assignee of the public entity.

4 The timely and complete payment of all mandated project
5 charges shall be a condition of receiving electric service for
6 customers of the public entity, and the public entity shall be
7 authorized to use its established collection policies and all
8 rights and remedies provided by the law to enforce payment and
9 collection of the mandated project charges. In no event shall any
10 customer of a public entity be entitled or authorized to withhold
11 payment, in whole or in part, of any mandated project charges for
12 any reason.

13 Sec. 13. (1) A public entity has the authority to issue
14 mandated project bonds, including refunding bonds, in one or more
15 series. Mandated project charges to which the public entity may at
16 any time be entitled shall be pledged, without any necessity for
17 specific authorization of the pledge by the public entity, to the
18 mandated project bonds. Each such series of mandated project bonds
19 shall be secured by and payable from a first lien on mandated
20 project charges pledged for such purpose. Any separate consensual
21 lien or security interest shall be created in accordance with and
22 governed by the Nebraska Governmental Unit Security Interest Act.
23 The proceeds of such bonds shall be applied exclusively to payment
24 of mandated project costs and financing costs and, in the case of
25 proceeds of refunding bonds, the retirement or defeasance of
26 mandated project bonds.

27 (2) The public entity and any successor or assignee of
28 the public entity shall be obligated to impose and collect the

1 mandated project charges in amounts sufficient to pay debt service
2 on the mandated project bonds as due. The pledge of mandated
3 project charges shall be irrevocable, and the state, the public
4 entity, or any successor or assignee of the public entity may not
5 reduce, impair, or otherwise adjust mandated project charges,
6 except that the public entity and any successor or assignee thereof
7 shall implement the periodic adjustment method established by the
8 authorizing resolution pursuant to subdivision (4) of section 12 of
9 this act. Revenues from mandated project charges shall be deemed
10 special revenues and shall not constitute revenue of the public
11 entity for purposes of any pledge of revenues, receipts, or other
12 income that such public entity has made or will make for the
13 security of debt other than the mandated project bonds to which the
14 revenues from the mandated project charges is expressly pledged.

15 Sec. 14. Mandated project charges shall be applied
16 exclusively for the purpose of paying mandated project costs,
17 including any adjustments or such charges pursuant to subdivision
18 (4) of section 12 of this act, and financing costs.

19 Sec. 15. A public entity undertaking a mandated project
20 is not required to pay or reimburse the costs of the mandated
21 project with mandated project charges, and such public entity is
22 not required to issue mandated project bonds. The use of mandated
23 project charges and issuance of mandated project bonds are elective
24 actions wholly within the discretion of the public entity.

25 Sec. 16. A public entity collecting mandated project
26 charges shall annually provide its customers with a concise
27 explanation of mandated project charges billed to customers. Such
28 explanation may be by billing insert, web site information, or

1 other appropriate means.

2 Sec. 17. The Public Entities Mandated Project Charges
3 Act and all grants of power and authority in the act shall be
4 liberally construed to effectuate their purpose, and all incidental
5 powers necessary to carry into effect the provisions of the act are
6 expressly granted to and conferred upon public entities.

7 Sec. 18. If any section in this act or any part of any
8 section is declared invalid or unconstitutional, the declaration
9 shall not affect the validity or constitutionality of the remaining
10 portions.